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December 10, 2012

Commissioner Karen Douglas
Commissioner Carla Peterman
Hearing Officer Ken Celli
Hidden Hills Solar Electric Generating System (11-AFC-2)
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814



Re: Intervenor Cindy R. MacDonald's Objection to Order Denying Motion to Terminate Application for Certification for the HHSEGS (11-AFC-2)

Dear Commissioner Douglas, Commissioner Peterman, and Hearing Officer Celli:

We are writing in reference to the *Objection to Order Denying Motion to Terminate Application for Certification for the HHSEGS* filed by Intervenor Cindy R. MacDonald on December 6, 2012 ("December 6th Objection"). The December 6th Objection refers to the Committee's November 29, 2012 Order dismissing Ms. MacDonald's *Motion To Terminate Application For Certification For The Hidden Hills Solar Electric Generating System* ("Motion") filed on November 26, 2012.

The Committee properly dismissed the Motion. As the Committee correctly stated, the statutory authority cited by Ms. MacDonald applies to post-certification matters, and not prior to evidentiary hearings. There is no legal authority for a party to "object" to a Committee ruling dismissing a procedurally incorrect motion. Therefore, the Committee would be fully justified in not responding to Ms. MacDonald's most recent pleading. The Committee can simply stand on its prior order. However, in the event that the Committee is inclined to rule on the December 6th Objection, the Applicant requests that the Committee dismiss the December 6th Objection, or in the alternative, dismiss the Motion with prejudice.

Not only was the Motion procedurally flawed, it also raised many allegations that are factually incorrect. Given the recently filed December 6th Objection, wherein Ms. MacDonald persists in her false and vexatious assertions, the Applicant is compelled to respond to ensure that the record is clear with respect to the most egregious allegations raised by Ms. MacDonald.

The most egregious allegation in both the Motion and the December 6th Objection is that the Applicant has “committed perjury in at least two verifiable instances.”¹ Specifically, Ms. MacDonald has alleged that “Applicant failed to accurately and truthfully present relevant and pertinent facts regarding ownership of all land within the proposed project site boundaries, the actual status of lease options and/or agreements with all landowners or that they had, in fact, not secured the proposed project site in its entirety as originally claimed.”² Ms. MacDonald complains that “Applicant’s statements and presentation in the AFC files were neither truthful or accurate[,]” and that it was a material misrepresentation for the AFC to not state that the Applicant was negotiating for acquisition of one of the parcels on the proposed project site.³ However, the failure of the AFC to be written as Ms. MacDonald would write it is neither material, nor a misrepresentation of facts, nor does it constitute perjury.

There is no dispute that the proposed boundaries of the project site are clearly depicted in the AFC. There is no dispute that the HHSEGS AFC identifies all of the parcel numbers that comprise the project site.⁴ There is also no dispute that the HHSEGS AFC states that the landowner information for all of those parcels comprising the project site, in addition to those within 1,000 feet of the project site, are disclosed in Appendix 1A of the AFC.⁵ Therefore, Ms. MacDonald’s allegation that Applicant has failed to accurately and truthfully present relevant and pertinent facts regarding ownership of the lands within the proposed project site boundaries is simply incorrect.

In addition, contrary to Ms. MacDonald’s assertions, the AFC does not state that the Applicant “has secured the proposed project site in its entirety. . .”⁶ Instead, the AFC states, unambiguously, that the Applicant intends to acquire leasehold interests in private properties for the HHSEGS site, such as the Tsiamis property.⁷ Similarly, the AFC states: “Hidden Hills Solar I, LLC, and Hidden Hills Solar II, LLC, will hold leasehold interests in privately held land located in the Mojave Desert between Death Valley and the California-Nevada border as the site for their respective solar plants and the common area.”⁸ It does not say “does hold leasehold interests,” but rather that it will, in the future, hold such interests.

¹ See, MacDonald, Cindy, *Motion to Terminate Application for Certification for the Hidden Hills Solar Electric Generating System*, p. 4, Docket No. 11-AFC-02 (docketed on Nov. 27, 2012); also see MacDonald, Cindy, *Objection to Order Denying Motion to Terminate Application for Certification for the HHSEGS*, p. 2, Docket No. 11-AFC-2 (dated Dec. 6, 2012).

² MacDonald, Cindy, *Motion to Terminate Application for Certification for the Hidden Hills Solar Electric Generating System*, p. 8, Docket No. 11-AFC-02 (docketed on Nov. 27, 2012).

³ MacDonald, Cindy, *Motion to Terminate Application for Certification for the Hidden Hills Solar Electric Generating System*, p. 9, Docket No. 11-AFC-02 (docketed on Nov. 27, 2012).

⁴ Appendix 1A includes assessor maps of the site and surrounding area. The Tsiamis parcel (APN 048-690-08)—which is Book 48, Page 69—is clearly shown on the index page of the assessor maps as being entirely within the project boundary.

⁵ Application for Certification of the Hidden Hills Solar Electric Generating System, pp. 1-5, 2-3.

⁶ MacDonald, Cindy, *Motion to Terminate Application for Certification for the Hidden Hills Solar Electric Generating System*, p. 8, Docket No. 11-AFC-02 (Docketed on Nov. 27, 2012).

⁷ HHSEGS AFC, p. 1-1.

⁸ HHSEGS AFC, p. 1-6 and pp. 2-5 to 2-6. (Emphasis added.)

Ms. MacDonald also alleges that the Tsiamis parcel is described in the AFC as outside the HHSEGS project footprint.⁹ This also is incorrect. Appendix 1A, which is labeled “Landowner Information”, identifies both parcels within 1,000 feet of the project site and all of the parcels that make up the proposed HHSEGS project– including the Roland John Wiley Trust parcels, the Mary Wiley Trust parcels, Section 20, LLC parcels, and the Tsiamis parcel. It is correct that Appendix 1A has a sub-heading that is labeled “Property Owners Within 1000 Feet of Hidden Hills SEGS,” rather than the more all-inclusive Heading of “Landowner Information”, but information presented in Appendix 1A was and is correct. It is sheer hyperbole for Ms. MacDonald to characterize a subheading as “perjury” when all landowner information is presented in the appendix. Moreover, an Applicant is not required to secure site control of any parcel within these proposed boundaries in order for an AFC to be approved.¹⁰ Therefore, whether any or all parcels on the proposed site are owned by the Applicant, under option, or being considered for purchase or option is immaterial to the Commission’s decision whether to approve the license.¹¹ Applicant has no duty to disclose immaterial facts in an Application.¹²

Ms. MacDonald also accuses the Applicant, in multiple instances, of “falsifying,” “misrepresenting,” and “omitting” material facts related to the design and operation of the proposed Hidden Hills SEGS, and claims that these accusations are supported by filings made by BrightSource Energy with the Securities and Exchange Commission (SEC).¹³ This is incorrect. Applicant has provided all material information relating to the design and operation of the HHSEGS project in conformance with the Commission’s regulations, and in response to requests for information from Commission Staff, truthfully and accurately. It is alarming that Ms. MacDonald would blithely accuse the Applicant of “falsifying” material facts without providing any basis for the accusation.

Finally, although this issue was not raised in her December 6th Objection, Applicant would like to address Ms. MacDonald’s erroneous accusations that BrightSource Energy, Mr. Nick Gabler, Mr. Kelly Bradley, and KEOL Resources International Corporation have “intentionally” failed to disclose that KEOL was retained to act as a Community Outreach Representative for the Project.¹⁴

Ms. MacDonald’s accusation is belied by the facts set forth in her own motion. As she admits, the relationship between KEOL and the Applicant is well known within the Charleston View

⁹ MacDonald, Cindy, *Motion to Terminate Application for Certification for the Hidden Hills Solar Electric Generating System*, p. 8, Docket No. 11-AFC-02 (Docketed on Nov. 27, 2012).

¹⁰ See generally, 20 C.C.R. § 1700, et. seq.; see also Appendix B, Chapter 5 of the Commission’s regulations.

¹¹ Cal. Pub. Resources Code §25523.

¹² 20 C.C.R. §1704(c).

¹³ MacDonald, Cindy, *Objection to Order Denying Motion to Terminate Application for Certification for the HHSEGS*, p. 2, Docket No. 11-AFC-2 (dated Dec. 6, 2012).

¹⁴ MacDonald, Cindy, *Motion to Terminate Application for Certification for the Hidden Hills Solar Electric Generating System*, pp. 3, 24 Docket No. 11-AFC-02 (Docketed on Nov. 27, 2012).

Area, and has been clearly disclosed to the public.¹⁵ Evidence of this public disclosure is provided as Exhibit IX to Ms. MacDonald's Motion, and acknowledged in the Motion itself: "On May 10, 2011, KEOL Resources International sent landowners in the HHSEGS project vicinity a letter signed by Kelly Bradley announcing KEOL's appointment as the Community Outreach Consultant for Bright Source Energy."¹⁶

Thereafter, when the Committee held the first Public Informational Hearing and Scoping Meeting for the Project on November 3, 2011, Mr. Bradley clearly disclosed his relationship to the Applicant:

COMMISSIONER DOUGLAS: Thank you for your comments. I have a card from Kelly Bradley.

MR. BRADLEY: Good afternoon. First, I'd like to thank you for giving me the opportunity to be here today. My name is Kelly Bradley, and I'm a BrightSource Energy appointed community outreach representative for the Charleston View community.¹⁷ (emphasis added)

Although Mr. Bradley was present at the Public Informational Hearing and Scoping Meeting to read into the record a letter of support from a community stakeholder, the developer of the St. Therese Mission in Charleston View, he ensured that the Committee and the public were on notice of his relationship with BrightSource Energy.

Ms. MacDonald also accuses Mr. Gabler of "portraying himself merely as 'a citizen at large' and concerned, but independent businessman."¹⁸ However, Mr. Gabler's letter never uses the words Ms. MacDonald falsely attributes to him, such as "*independent* expert, independent businessman, or *independent* citizen at large..."¹⁹ (Emphasis in original.) Ms. MacDonald also faults Mr. Gabler for describing himself as "'a licensed California Corporate Real-Estate Broker' [that] 'represents a company that, among others, promotes investment opportunities in Inyo County (Charleston View),'"²⁰ and "intentionally omit[ing] his and/or his company's position with respect to serving as Applicant's representative and/or consultant for the proposed HHSEGS for nearly the last two years."²⁰

¹⁵ See, MacDonald, Cindy, *Motion to Terminate Application for Certification for the Hidden Hills Solar Electric Generating System*, Docket No. 11-AFC-02 (Docketed on Nov. 27, 2012).

¹⁶ MacDonald, Cindy, *Motion to Terminate Application for Certification for the Hidden Hills Solar Electric Generating System*, Docket No. 11-AFC-02 (Docketed on Nov. 27, 2012).

¹⁷ HHSEGS Site Visit and Informational Hearing, 11/3/11 RT 104; emphasis added.

¹⁸ MacDonald, Cindy, *Motion to Terminate Application for Certification for the Hidden Hills Solar Electric Generating System*, p. 24, Docket No. 11-AFC-02 (Docketed on Nov. 27, 2012).

¹⁹ MacDonald, Cindy, *Motion to Terminate Application for Certification for the Hidden Hills Solar Electric Generating System*, p. 25, Docket No. 11-AFC-02 (Docketed on Nov. 27, 2012).

²⁰ MacDonald, Cindy, *Motion to Terminate Application for Certification for the Hidden Hills Solar Electric Generating System*, p. 24, Docket No. 11-AFC-02 (Docketed on Nov. 27, 2012).

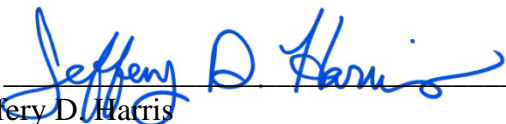
Unfortunately, in her description of Mr. Gabler's letter, Ms. MacDonald omits a key passage wherein Mr. Gabler discloses his relationship with the Applicant, stating that his company "promotes... properties currently under option to BrightSource for the proposed Hidden Hills SEGS."²¹ In other communications with Commission Staff, Mr. Gabler is equally forthcoming regarding his affiliation with both KEOL Resources International Corporation and landowners in the Charleston View area.²² For Ms. MacDonald to allege that the Applicant, Mr. Bradley, and Mr. Gabler have "intentionally" failed to disclose a business relationship is simply absurd.²³ The fact that Mr. Bradley and Mr. Gabler were retained by Applicant to act as Community Outreach Representatives and those whose property is under option to the Applicant has been a matter of public record for a very long time.

In summary, we wish the record to be clear that the Applicant has been diligent in providing truthful and accurate information to the Commission, Commission Staff, and the public in this proceeding, and has clearly disclosed its affiliations both in its communications to the community and before the Commission. We hope and expect that Ms. MacDonald will be equally diligent in tendering truthful and accurate pleadings and testimony in this proceeding.

We reiterate that there is no legal authority for a party to "object" to a Committee ruling dismissing a procedurally incorrect motion. Therefore, the Committee would be fully justified in not responding to Ms. MacDonald's most recent pleading. The Committee can simply stand on its prior order. However, in the event that the Committee is inclined to rule on the December 6th Objection, the Applicant requests that the Committee dismiss the December 6th Objection, or in the alternative, dismiss the Motion with prejudice.

Sincerely,

ELLISON, SCHNEIDER & HARRIS L.L.P.

By 
Jeffery D. Harris
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Attorneys for Applicants

²¹ Letter from Nick Garbler to Mike Monasmith, Re: Inyo County's September 19, 2012 Comments to Hidden Hills SEGS Applicants Motion in Limine (Oct. 3, 2012), TN# 67518.

²² For example, see email from Nick Gabler to Mike Monasmith, Re: Hidden Hills SEGS Docket # 67518 (Oct. 10, 2012), TN # 67647.

²³ See, MacDonald, Cindy, *Motion to Terminate Application for Certification for the Hidden Hills Solar Electric Generating System*, Docket No. 11-AFC-02 (Docketed on Nov. 27, 2012).

STATE OF CALIFORNIA

Energy Resources Conservation
and Development Commission

Application for Certification for the HIDDEN)
HILLS SOLAR ELECTRIC GENERATING) Docket No. 11-AFC-2
SYSTEM PROJECT)
_____)

PROOF OF SERVICE

I, Karen A. Mitchell, declare that on December 10, 2012, I served the attached *HHSEGS Response to Cindy MacDonald's Objection to Committee Order* via electronic and U.S. mail to all parties on the attached service list.

I declare under the penalty of perjury that the foregoing is true and correct.



Karen A. Mitchell

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11-AFC-2

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